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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,926	01/18/2001	Tom Fristoe	25118.00400	7423

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REED SMITH, LLP  
TWO EMBARCADERO CENTER  
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SAN FRANCISCO, CA 94111

EXAMINER
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HOYE, MICHAEL W

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/765,926	Applicant(s) FRISTOE ET AL.	
	Examiner Michael W. Hoyer	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 20, 22, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 20, 22, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*ay*

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicants' arguments with respect to claims 1-10, 20, 22 and 25-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the built on-the-fly player" in line 9. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7-10, 20, 22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins-Rector et al (USPN 6,188,398), in view of Hurwitz (USPN 6,256,669), in further view of Parthasarathy et al (USPN 6,802,061), all cited by the Examiner.

Regarding Claim 1, Collins-Rector discloses a method of producing a rich media player. The claimed step of “accessing a predefined template comprising a basic movie player” is specifically met by providing an interactive video experience using web pages by utilizing a JavaScript and frames capable web browser which uses a QuickTime 3 or similar browser plugin, including Microsoft Netshow and RealNetworks (see Fig. 2; col. 1, lines 65-67; col. 2, line 63 – col. 3, line 11 and lines 25-27; and col. 4, lines 5-12). The template is met by the HTML page and the frames as displayed by the web browser shown in Fig. 2, which further comprises a movie/video player as met by the QuickTime 3 or similar browser plugin, including Microsoft Netshow and RealNetworks, that is part of the web browser. The claimed “having track locations” is met by frames 31, 33, 35 and 37. Further disclosed is the claimed “applying a set of selected tracks to the track locations of the template” (see col. 4, lines 5-14), and the claimed “saving the player in a place accessible when the player is needed” is met by col. 3, lines 2-6, which states that, “As is well known in the art, JavaScript and frames capable web browsers execute as a program in a personal computer...”, and as previously described above in col. 2, lines 63-67, the JavaScript and frames capable web browser have a QuickTime 3 or similar browser plugin for handling the video/movie information for display within a page. The Collins-Rector reference does not explicitly disclose that the movie player is “designed to operate at a predetermined connection speed” and “to play content matching the player’s connection speed”, as well as, “receiving a connection speed identifier”. Hurwitz teaches the use of a content

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handler which analyzes the bandwidth characterization (or “connection speed identifier”) provided by the Web browser in order to determine the connection speed and render or play media content accordingly (see col. 5, line 27 – col. 6, line 5). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the Collins-Rector reference with the Hurwitz reference for the advantage of producing media content at the highest quality or fastest connection speed that the player is capable of in order to maximize the video quality without unnecessary skipping/buffer under-runs. The claimed steps of “uploading a built on-the-fly player corresponding to the connection speed identifier; and serving the requested rich media content to the uploaded player; wherein the steps of accessing, applying, and saving occur on-the-fly after receipt of a rich media request from an end user computer system”, are not completely met by the combination of the Collins-Rector and Hurwitz references. However, the Parthasarathy et al reference teaches methods and systems for automatically downloading computer software components from a computer network (see Abstract). More specifically, Parthasarathy et al teaches automatically sending, installing and displaying virtually any type of component or plug-in, such as a multimedia player, from a server or remote computer to an end user computer system, such as a network browser or other applications or devices which are not network browsers, based on a request from an end user computer system (see col. 2, line 20 – col. 3, line 62). Therefore, it would have been obvious to have further combined the Collins-Rector and Hurwitz references with the Parthasarathy et al reference for the advantage of producing a rich media player on the fly on a user end computer system, where the user end computer system was previously incapable of producing playing the requested rich media content, and the process occurs on the fly or automatically in response to

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the end users request. One of ordinary skill in the art would have been led to make such a modification since Parthasarathy et al provides the teaching of uploading a built on the fly player to an end user computer system, which avoids a cumbersome process of the user having to manually install applications, components or plug-ins on their computer system in order to access rich media content that their present system is incapable of displaying.

Regarding Claim 2, the Collins-Rector reference further discloses a method, as stated above in Claim 1, wherein the track location of the template is a promotion track location (col. 2, lines 33-44 and Figure 2, 33 and 35). Promotional tracks are selected in accordance with the video that is playing (col. 2, lines 46-50). This reads on the claimed selected track being a promotional track. The promotional tracks are placed in the track locations (col. 5, lines 6-15). The promotional track is linked to pages of additional information associated with the promotional track (col. 5, lines 1-2), which is received by the user.

Regarding Claim 3, the Collins-Rector reference discloses a method, as stated above in Claim 2, further comprising synchronizing ads with video as it is playing and updating content (col. 2, lines 39-54). This reads on the claimed receiving a set of parameters indicating when the promotion track is to be active. The ads are displayed in synch with video content being displayed as stated above. This reads on the claimed building the players consistent with the parameters. Ads are updated to they change as more information is available about the user or new ads as they are produced, as stated above. This reads on the claimed rebuilding the player to include promotional tracks when they become active. Further, old ads are replaced by new ads, and the old ads appear as a thumbnail list in a different window (col. 4, lines 63-67). This reads

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on the claimed rebuilding the player to remove promotional tracks when they have become inactive.

Regarding Claim 4, the Collins-Rector reference discloses a method, as stated above in Claim 3, further comprising the step of performing the steps of rebuilding if the promotional track has become active or inactive as stated above in Claim 3. Collins-Rector further discloses displaying an ad when a video player is requested to play (col. 4, lines 52-55). The claimed “checking the validity of a promotional track used in a player when the player is requested to play” is met by the Parthasarathy et al reference as previously combined with the Collins-Rector and Hurwitz references above, where Parthasarathy specifically discloses that the validity is checked or verified as described in col. 3, lines 50-57 and col. 9, lines 9-18, for example.

Regarding Claim 5, the Collins-Rector reference discloses a method, as stated above in Claim 3, further comprising the step of updating ads in synchronization with content (col. 2, lines 39-54). This reads on the claimed repeating the rebuilding at a predetermined time interval.

Regarding Claim 7, the Collins-Rector reference further comprises the step of placing web pages on a web server for a user to access (col. 4, lines 14-15). It is inherent that in order to access the pages, a user must send a request to the web server from their browsing software. This reads on the claimed receiving a request for rich media content from a content viewer. A web page framework (See Figure 2) is subsequently downloaded. This reads on the claimed downloading a master movie to the content viewer corresponding to the rich media content requested. The web page contains a frame referencing a video clip to be displayed (col. 4, lines 5-10). In order to display this video clip referenced from the web page, a request must be made to the server. A connection speed of the content viewer is determined as stated above in Claim 1

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through the combination of the Hurwitz reference. This reads on the claimed receiving a request from the master movie (URL of the embedded video in the frame) indicating rich media content matching the rich media request and a connection speed of the content viewer.

Regarding Claim 8, the Collins-Rector reference discloses a method as stated above in Claim 7. The Hurwitz reference further discloses the claimed connection speed is determined by the master movie (web page framework/content handler) by reading a profile (bandwidth characterization provided by the Web browser) on the host machine used by the content viewer.

Regarding Claim 9, the Collins-Rector reference discloses a method as stated above in Claim 7. The claimed connection speed is determined by the master movie by performing the steps of downloading a predetermined file from a server and calculating the connection speed using the file size and time required to download the file is met by Hurwitz as described above which further discloses a method for characterizing the bandwidth available to the user of a web browser by downloading media data and calculating the elapsed time to determine the number of bytes per second received (col. 4, lines 42-57). Hurwitz provides additional evidence that ordinary workers in the art would recognize the benefits of downloading a predetermined file from a server to calculate available bandwidth. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Collins-Rector with the bandwidth measurement of Hurwitz in order to accurately determine the correct bit-rate of a media asset without relying on user intervention to make the determination.

Regarding Claim 10, the Collins-Rector reference discloses a method as stated above in Claim 1, wherein at least one of the track locations is a buy button track location (col. 2, lines 22-29). Displaying the button reads on the claimed applying a buy button track to the buy button



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track location. The button is linked to another page to display more information, initiate a purchase or display a form to complete (col. 5, lines 2-5). What is not disclosed is linking a back end application configured to add an item to the viewer's shopping cart to the buy button.

Official Notice is hereby taken it was well known in the art at the time the invention was made to provide a link to a shopping cart application. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Collins-Rector as combined with Hurwitz and Parthasarathy with the shopping cart of the well-known prior art in order to allow a user to continue to shop for other items and purchase them all at once using a well-known and friendly interface.

Regarding Claim 20, the Collins-Rector reference discloses a method as stated above in Claim 1, wherein a web page is transmitted to a user's web browser as stated above. This reads on the claimed electronic signal being transmitted, propagating through a medium and received. It is inherent that such digital data be decoded from bit patterns in order to be properly rendered. The data comprises a rich media player (See Figure 2).

Regarding claim 22, the claimed saved player comprises an entire solution for playing the movie and displaying the applied tracks on a computer without reference to movie players resident on the same computer or elsewhere is inherent to the system of Collins-Rector as combined with Hurwitz and Parthasarathy, as described above in claim 1, wherein the saved player is an entire solution for playing the movie and the player does not need to reference other movie players resident on the same computer or elsewhere.

Regarding claim 25, the claimed "wherein the connection speed identifier comprises a communication form a built on-the-fly master movie built and then uploaded to the end user

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computer system after receipt of the rich media request” is met by the Hurwitz reference as combined with the other references and as previously described in claim 1.

Regarding claim 26, the claimed “wherein the master movie determines the connection speed to identify without interaction with the user of the end user computer system” is met by the Hurwitz reference as described in col. 5, line 40 – col. 6, line 5.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collins-Rector et al, in view Hurwitz, in further view of Parthasarathy et al, and in further view of Chang et al (USPN 6,715,126), all cited by the Examiner.

Regarding Claim 6, Collins-Rector as combined with Hurwitz and Parthasarathy et al discloses a method, as stated above in Claim 1, wherein the step of applying comprises applying a set of user/e-tailer selected tracks to the track locations of the template. These user/e-tailer tracks are advertisements that correspond to the programming as stated above. What is not disclosed, however, is applying a set of supplier-selected tracks to the track locations of the templates. Chang discloses a method for delivering media content over the web with synchronized images or events including applying a set of supplier-selected tracks to the track locations of the templates (See Figure 4). In this case, the supplier-selected tracks are logos such as the “Powered by HotAudio” logo. Chang is evidence that one of ordinary skill in the art at the time the invention was made would recognize the benefit of applying a supplier-selected track to the track location of a web page. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Collins-Rector,

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Hurwitz and Parthasarathy et al with the supplier logos of Chang in order to promote a supplier's product for greater revenue opportunities.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoyer whose telephone number is **571-272-7346**.

The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at **571-272-7353**.

**Any response to this action should be mailed to:**

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Michael W. Hoye  
March 3, 2006



**JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
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